

104TH CONGRESS
1ST SESSION

H. R. 2399

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27 (legislative day, SEPTEMBER 25), 1995

Received

AN ACT

To amend the Truth in Lending Act to clarify the intent of such Act and to reduce burdensome regulatory requirements on creditors.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Truth in Lending Act
5 Amendments of 1995”.

1 **SEC. 2. CERTAIN CHARGES.**

2 (a) THIRD PARTY FEES.—Section 106(a) of the
3 Truth in Lending Act (15 U.S.C. 1605(a)) is amended
4 by adding after the 2d sentence the following new sen-
5 tence: “The finance charge shall not include fees and
6 amounts imposed by third party closing agents (including
7 settlement agents, attorneys, and escrow and title compa-
8 nies) if the creditor does not require the imposition of the
9 charges or the services provided and does not retain the
10 charges.”.

11 (b) BORROWER-PAID MORTGAGE BROKER FEES.—

12 (1) INCLUSION IN FINANCE CHARGE.—Section
13 106(a) of the Truth in Lending Act (15 U.S.C.
14 1605(a)) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(6) Borrower-paid mortgage broker fees, in-
17 cluding fees paid directly to the broker or the lender
18 (for delivery to the broker) whether such fees are
19 paid in cash or financed.”.

20 (2) EFFECTIVE DATE.—The amendment made
21 by paragraph (1) shall take effect on the earlier of—

22 (A) 60 days after the date on which the
23 Board of Governors of the Federal Reserve Sys-
24 tem issues final regulations under paragraph
25 (3); or

1 (B) the date that is 12 months after the
2 date of the enactment of this Act.

3 (3) REGULATIONS IMPLEMENTING BORROWER-
4 PAID MORTGAGE BROKER FEES.—The Board of Gov-
5 ernors of the Federal Reserve System shall promul-
6 gate regulations implementing the amendment made
7 by paragraph (1) by no later than 6 months after
8 the date of the enactment of this Act.

9 (c) TAXES ON SECURITY INSTRUMENTS OR EVI-
10 DENCES OF INDEBTEDNESS.—Section 106(d) of the
11 Truth in Lending Act (15 U.S.C. 1605(d)) is amended
12 by adding at the end the following new paragraph:

13 “(3) Any tax levied on security instruments or
14 on documents evidencing indebtedness if the pay-
15 ment of such taxes is a precondition for recording
16 the instrument securing the evidence of indebted-
17 ness.”.

18 (d) PREPARATION OF LOAN DOCUMENTS.—Section
19 106(e)(2) of the Truth in Lending Act (15 U.S.C.
20 1605(e)(2)) is amended to read as follows:

21 “(2) Fees for preparation of loan-related docu-
22 ments.”.

23 (e) FEES RELATING TO PEST INFESTATIONS, IN-
24 SPECTIONS, AND HAZARDS.—Section 106(e)(5) of the
25 Truth in Lending Act (15 U.S.C. 1605(e)(5)) is amended

1 by inserting “, including fees related to any pest infesta-
2 tion or flood hazard inspections conducted prior to clos-
3 ing” before the period.

4 (f) ENSURING FINANCE CHARGES REFLECT COST OF
5 CREDIT.—

6 (1) REPORT.—

7 (A) IN GENERAL.—Not later than 6
8 months after the date of the enactment of this
9 Act, the Board of Governors of the Federal Re-
10 serve System shall submit to the Congress a re-
11 port containing recommendations on any regu-
12 latory or statutory changes necessary—

13 (i) to ensure that finance charges im-
14 posed in connection with consumer credit
15 transactions more accurately reflect the
16 cost of providing credit; and

17 (ii) to address abusive refinancing
18 practices engaged in for the purpose of
19 avoiding rescission.

20 (B) REPORT REQUIREMENTS.—In prepar-
21 ing the report under this paragraph, the Board
22 shall—

23 (i) consider the extent to which it is
24 feasible to include in finance charges all
25 charges payable directly or indirectly by

1 the consumer to whom credit is extended,
2 and imposed directly or indirectly by the
3 creditor as an incident to the extension of
4 credit (especially those charges excluded
5 from finance charges under section 106 of
6 the Truth in Lending Act as of the date of
7 the enactment of this Act), excepting only
8 those charges which are payable in a com-
9 parable cash transaction; and

10 (ii) consult with and consider the
11 views of affected industries and consumer
12 groups.

13 (2) REGULATIONS.—The Board of Governors of
14 the Federal Reserve System shall prescribe any ap-
15 propriate regulation in order to effect any change in-
16 cluded in the report under paragraph (1), and shall
17 publish the regulation in the Federal Register before
18 the end of the 1-year period beginning on the date
19 of enactment of this Act.

20 **SEC. 3. TOLERANCES; BASIS OF DISCLOSURES.**

21 (a) TOLERANCES FOR ACCURACY.—Section 106 of
22 the Truth in Lending Act (15 U.S.C. 1605) is amended
23 by adding at the end the following new subsection:

24 “(f) TOLERANCES FOR ACCURACY.—In connection
25 with credit transactions not under an open end credit plan

1 that are secured by real property or a dwelling, the disclo-
2 sure of the finance charge and other disclosures affected
3 by any finance charge—

4 “(1) shall be treated as being accurate for pur-
5 poses of this title if the amount disclosed as the fi-
6 nance charge—

7 “(A) does not vary from the actual finance
8 charge by more than \$100; or

9 “(B) is greater than the amount required
10 to be disclosed under this title; and

11 “(2) shall be treated as being accurate for pur-
12 poses of section 125 if—

13 “(A) except as provided in subparagraph
14 (B), the amount disclosed as the finance charge
15 does not vary from the actual finance charge by
16 more than an amount equal to one-half of one
17 percent of the total amount of credit extended;
18 or

19 “(B) in the case of a transaction, other
20 than a mortgage referred to in section 103(aa),
21 which—

22 “(i) is a refinancing of the principal
23 balance then due and any accrued and un-
24 paid finance charges of a residential mort-
25 gage transaction as defined in section

1 103(w), or is any subsequent refinancing
2 of such a transaction; and

3 “(ii) does not provide any new consoli-
4 dation or new advance;

5 if the amount disclosed as the finance charge
6 does not vary from the actual finance charge by
7 more than an amount equal to one percent of
8 the total amount of credit extended.”.

9 (b) BASIS OF DISCLOSURE FOR PER DIEM INTER-
10 EST.—Section 121(c) of the Truth in Lending Act (15
11 U.S.C. 1631(c)) is amended by adding at the end the fol-
12 lowing new sentence: “In the case of any consumer credit
13 transaction a portion of the interest on which is deter-
14 mined on a per diem basis and is to be collected upon
15 the consummation of such transaction, any disclosure with
16 respect to such portion of interest shall be deemed to be
17 accurate for purposes of this title if the disclosure is based
18 on information actually known to the creditor at the time
19 that the disclosure documents are being prepared for the
20 consummation of the transaction.”.

21 **SEC. 4. LIMITATION ON LIABILITY.**

22 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
23 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
24 at the end the following new section:

1 **“SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.**

2 “(a) LIMITATIONS ON LIABILITY.—For any
3 consumer credit transaction subject to this title that is
4 consummated before the date of the enactment of the
5 Truth in Lending Act Amendments of 1995, a creditor
6 or any assignee of a creditor shall have no civil, adminis-
7 trative, or criminal liability under this title for, and a
8 consumer shall have no extended rescission rights under
9 section 125(f) with respect to—

10 “(1) the creditor’s treatment, for disclosure
11 purposes, of—

12 “(A) taxes described in section 106(d)(3);

13 “(B) fees described in section 106(e)(2)
14 and (5);

15 “(C) fees and amounts referred to in the
16 3rd sentence of section 106(a); or

17 “(D) borrower-paid mortgage broker fees
18 referred to in section 106(a)(6);

19 “(2) the form of written notice used by the
20 creditor to inform the obligor of the rights of the ob-
21 ligor under section 125 if the creditor provided the
22 obligor with a properly dated form of written notice
23 published and adopted by the Board or a comparable
24 written notice, and otherwise complied with all the
25 requirements of this section regarding notice; or

1 “(3) any disclosure relating to the finance
2 charge imposed with respect to the transaction if the
3 amount or percentage actually disclosed—

4 “(A) may be treated as accurate for pur-
5 poses of this title if the amount disclosed as the
6 finance charge does not vary from the actual fi-
7 nance charge by more than \$200;

8 “(B) may, under section 106(f)(2), be
9 treated as accurate for purposes of section 125;
10 or

11 “(C) is greater than the amount or per-
12 centage required to be disclosed under this title.

13 “(b) EXCEPTIONS.—Subsection (a) shall not apply
14 to—

15 “(1) any individual action or counterclaim
16 brought under this title which was filed before June
17 1, 1995;

18 “(2) any class action brought under this title
19 for which a final order certifying a class was entered
20 before January 1, 1995;

21 “(3) the named individual plaintiffs in any class
22 action brought under this title which was filed before
23 June 1, 1995; or

1 “(4) any consumer credit transaction with re-
2 spect to which a timely notice of rescission was sent
3 to the creditor before June 1, 1995.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 2 of the Truth in Lending Act is amended
6 by inserting after the item relating to section 138 the fol-
7 lowing new item:

 “139. Certain limitations on liability.”.

8 **SEC. 5. LIMITATION ON RESCISSION LIABILITY.**

9 Section 125 of the Truth in Lending Act (15 U.S.C.
10 1635) is further amended by adding at the end the follow-
11 ing new subsection:

12 “(h) LIMITATION ON RESCISSION.—An obligor shall
13 have no rescission rights arising solely from the form of
14 written notice used by the creditor to inform the obligor
15 of the rights of the obligor under this section, if the credi-
16 tor provided the obligor the appropriate form of written
17 notice published and adopted by the Board, or a com-
18 parable written notice of the rights of the obligor, that
19 was properly completed by the creditor, and otherwise
20 complied with all other requirements of this section re-
21 garding notice.”.

22 **SEC. 6. CALCULATION OF DAMAGES.**

23 Section 130(a)(2)(A) of the Truth in Lending Act
24 (15 U.S.C. 1640(a)(2)(A)) is amended—

1 (1) by striking “or (ii)” and inserting “(ii)”;
2 and

3 (2) by inserting before the semicolon at the end
4 the following: “, or (iii) in the case of an individual
5 action relating to a credit transaction not under an
6 open end credit plan that is secured by real property
7 or a dwelling, not less than \$200 or greater than
8 \$2,000”.

9 **SEC. 7. ASSIGNEE LIABILITY.**

10 (a) VIOLATIONS APPARENT ON THE FACE OF TRANS-
11 ACTION DOCUMENTS.—Section 131 of the Truth in Lend-
12 ing Act (15 U.S.C. 1641) is amended by adding at the
13 end the following new subsection:

14 “(e) LIABILITY OF ASSIGNEE FOR CONSUMER CRED-
15 IT TRANSACTIONS SECURED BY REAL PROPERTY.—

16 “(1) IN GENERAL.—Except as otherwise specifi-
17 cally provided in this title, any civil action against
18 a creditor for a violation of this title, and any pro-
19 ceeding under section 108 against a creditor, with
20 respect to a consumer credit transaction secured by
21 real property may be maintained against any as-
22 signee of such creditor only if—

23 “(A) the violation for which such action or
24 proceeding is brought is apparent on the face of

1 the disclosure statement provided in connection
2 with such transaction pursuant to this title; and

3 “(B) the assignment to the assignee was
4 voluntary.

5 “(2) VIOLATION APPARENT ON THE FACE OF
6 THE DISCLOSURE DESCRIBED.—For the purpose of
7 this section, a violation is apparent on the face of
8 the disclosure statement if—

9 “(A) the disclosure can be determined to
10 be incomplete or inaccurate by a comparison
11 among the disclosure statement, any itemization
12 of the amount financed, the note, or any other
13 disclosure of disbursement; or

14 “(B) the disclosure statement does not use
15 the terms or format required to be used by this
16 title.”.

17 (b) SERVICER NOT TREATED AS ASSIGNEE.—Section
18 131 of the Truth in Lending Act (15 U.S.C. 1641) is fur-
19 ther amended by adding after subsection (e) (as added by
20 subsection (a) of this section) the following new sub-
21 section:

22 “(f) TREATMENT OF SERVICER.—

23 “(1) IN GENERAL.—A servicer of a consumer
24 obligation arising from a consumer credit trans-
25 action shall not be treated as an assignee of such ob-

1 ligation for purposes of this section unless the
2 servicer is or was the owner of the obligation.

3 “(2) SERVICER NOT TREATED AS OWNER ON
4 BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CON-
5 VENIENCE.—A servicer of a consumer obligation
6 arising from a consumer credit transaction shall not
7 be treated as the owner of the obligation for pur-
8 poses of this section on the basis of an assignment
9 of the obligation from the creditor or another as-
10 signee to the servicer solely for the administrative
11 convenience of the servicer in servicing the obliga-
12 tion. Upon written request by the obligor, the
13 servicer shall provide the obligor, to the best knowl-
14 edge of the servicer, with the name, address, and
15 telephone number of the owner of the obligation or
16 the master servicer of the obligation.

17 “(3) SERVICER DEFINED.—For purposes of this
18 subsection, the term ‘servicer’ has the same meaning
19 as in section 6(i)(2) of the Real Estate Settlement
20 Procedures Act of 1974.

21 “(4) APPLICABILITY.—This subsection shall
22 apply to all consumer credit transactions in existence
23 or consummated on or after the date of the enact-
24 ment of the Truth in Lending Act Amendments of
25 1995.”.

1 **SEC. 8. RESCISSION RIGHTS IN FORECLOSURE.**

2 Section 125 of the Truth in Lending Act (15 U.S.C.
3 1635) is amended by inserting after subsection (h) (as
4 added by section 5 of this Act) the following new sub-
5 section:

6 “(i) RESCISSION RIGHTS IN FORECLOSURE.—

7 “(1) IN GENERAL.—Notwithstanding section
8 139, and subject to the time period provided in sub-
9 section (f), in addition to any other right of rescis-
10 sion available under this section for a transaction,
11 after the initiation of any judicial or nonjudicial
12 foreclosure process on the primary dwelling of an ob-
13 ligor securing an extension of credit, the obligor
14 shall have a right to rescind the transaction equiva-
15 lent to other rescission rights provided by this sec-
16 tion, if—

17 “(A) a mortgage broker fee is not included
18 in the finance charge in accordance with the
19 laws and regulations in effect at the time the
20 consumer credit transaction was consummated;
21 or

22 “(B) the form of notice of rescission for
23 the transaction is not the appropriate form of
24 written notice published and adopted by the
25 Board or a comparable written notice, and oth-

1 erwise complied with all the requirements of
2 this section regarding notice.

3 “(2) TOLERANCE FOR DISCLOSURES.—Notwith-
4 standing section 106(f), and subject to the time pe-
5 riod provided in subsection (f), for the purposes of
6 exercising any rescission rights after the initiation of
7 any judicial or nonjudicial foreclosure process on the
8 principal dwelling of the obligor securing an exten-
9 sion of credit, the disclosure of the finance charge
10 and other disclosures affected by any finance charge
11 shall be treated as being accurate for purposes of
12 this section if the amount disclosed as the finance
13 charge does not vary from the actual finance charge
14 by more than \$35 or is greater than the amount re-
15 quired to be disclosed under this title.

16 “(3) RIGHT OF RECOUPMENT UNDER STATE
17 LAW.—Nothing in this subsection affects a consum-
18 er’s right of rescission in recoupment under State
19 law.

20 “(4) APPLICABILITY.—This subsection shall
21 apply to all consumer credit transactions in existence
22 or consummated on or after the date of the enact-

1 ment of the Truth in Lending Act Amendments of
2 1995.”.

Passed the House of Representatives September 27,
1995.

Attest: ROBIN H. CARLE,
Clerk.

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